MT LEGISLATIVE HISTORY

Chapter 505 1983

Bill H 660 S _____ Original bill & hist. ✓ C

H. Committee on Jud			S. Committee on Jud		
Hearing Date(s)	2/5	C	Hearing Date(s)	3/18	C
	2/11	C		3/9-3/14	C
		C			C
		C			C
Date Out		C			C

Did this bill originate in an interim committee? ___ Yes ✓ No

Committee _____ Report _____

HOUSE BILL NO. 660

INTRODUCED BY HANSEN, CHRISTIAENS

BY REQUEST OF THE COMMISSION FOR HUMAN RIGHTS

IN THE HOUSE

February 5, 1983	Introduced and referred to Committee on Judiciary.
February 12, 1983	Committee recommend bill do pass as amended. Report adopted.
February 14, 1983	Bill printed and placed on members' desks.
February 15, 1983	Second reading, do pass.
February 16, 1983	Considered correctly engrossed.
February 17, 1983	Third reading, passed. Transmitted to Senate.

IN THE SENATE

February 18, 1983	Introduced and referred to Committee on Judiciary.
March 14, 1983	Committee recommend bill be concurred in as amended. Report adopted.
March 16, 1983	Second reading, concurred in.
March 18, 1983	Third reading, concurred in. Ayes, 49; Noes, 0.

IN THE HOUSE

March 18, 1983	Returned to House with amendments.
March 31, 1983	Second reading, amendments concurred in.
April 1, 1983	Third reading, amendments concurred in.
	Sent to enrolling.
	Reported correctly enrolled.

House BILL NO. 660

INTRODUCED BY Stella Jean Hansen, Christiaens

BY REQUEST OF THE COMMISSION FOR HUMAN RIGHTS

A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH A PROCEDURE BY WHICH AN INDIVIDUAL ALLEGING A VIOLATION OF THE HUMAN RIGHTS ACT MAY ELECT TO PURSUE A COMPLAINT BEFORE THE COMMISSION IN DISTRICT COURT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Filing a complaint in district court. (1) The commission staff shall, at the request of the complainant, issue a letter entitling the complainant to file a discrimination action in district court if:

(a) the commission has not yet held a contested case hearing pursuant to 49-2-505; and

(b) one of the following has occurred:

(i) 180 days have elapsed since the date the complaint was filed under 49-2-501; or

(ii) the commission staff determines that its efforts to informally investigate and settle the complaint pursuant to 49-2-504 are unsuccessful.

(2) Within 90 days after receipt of a letter issued by the commission pursuant to subsection (1), a complainant may

LC 1236/01

petition the district court in the district in which the alleged violation occurred for appropriate relief.

(3) If the district court finds, in an action under this section, that a person, institution, entity, or agency against whom or which a complaint was filed has engaged in the unlawful discriminatory practice alleged in the complaint, the court may provide the same relief as described in 49-2-506 for a commission order. In addition, the court may in its discretion allow the prevailing party reasonable attorney fees.

Section 2. Codification instruction. Section 1 is intended to be codified as an integral part of Title 49, chapter 2, part 5, and the provisions of Title 49, chapter 2, apply to section 1.

Section 3. Effective date. This act is effective on passage and approval.

-End-

STATUS SHEET

JUDICIARY COMMITTEE

48th Legislature

ll No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
42	Authorizing the possession of antique slot machines	2/4/83	Rep. Yardley	2/11/83	Do Pass	2/11/83
50	To establish procedure for an individual alleging violations of Human Rights Act may elect to pursue a complaint, etc.	2/5/83	Rep. S. J. Hansen	2/11/83	Do Pass As Amended	2/11/83
54	To revise the gambling laws, by revising the definition of "slot machine" and "authorizing card game", etc.	2/5/83	Rep. Curtiss	2/9/83	Table	2/9/83
56	To increase from 3 to 20 days the notice period for termination of a mobile space rental agreement, etc.	2/5/83	Hammond	2/14/83	Do Pass	2/14/83
77	An act to allow bingo prizes to be paid in cash	2/8/83	Rep. Nilson	2/16/83	Do Pass As Amended	2/16/83
84	An act to increase the minimun penalties for sale of dangerous drugs, etc.	2/8/83	Rep. Ramirez	2/14/83	Do Pass	2/14/83

rm CS-32
81

MINUTES OF THE JUDICIARY COMMITTEE
February 11, 1983

The meeting of the House Judiciary Committee was called to order by Chairman Dave Brown at 8:03 a.m. in room 224A of the capitol building, Helena, Montana. All members were present as was Brenda Desmond, Staff Attorney for the Legislative Council.

HOUSE BILL 642

REPRESENTATIVE YARDLEY, District 74, Livingston, stated that this was a bill, which authorizes the possession of antique slot machines and amends the present statute, which makes it illegal to have any kind of a slot machine. He indicated that they put 1950 as the date that a slot machine would be considered an antique as that is the date they shifted from the old mechanical slot machines to the new type of slot machines. He presented to the committee an article from the Great Falls Tribune (See EXHIBIT A) and an article from the Coin Slot on the Status of the States. (See EXHIBIT B)

JOHN THOMPSON, Helena, testified that he thought it was a little ridiculous to have a law on the books that states it is a crime to own an antique slot machine; these machines when confined to the limits of this proposed law are a threat to no one; and he said you might as well have a law on the books that outlaws antique crossbows and antique guns, because, after all, they kill people and he has not heard yet of a person being killed by an antique slot machine.

BILL ERWIN, Helena, stated that he had one of these old slot machines and he passed a picture around for the committee to observe.

There were no further proponents and no opponents.

REPRESENTATIVE YARDLEY noted that these machines can be worth over $5,000.00; and he hoped that the committee would see their way clear to pass this bill.

REPRESENTATIVE SEIFERT commented that he felt this was a good bill, but he wondered if he checked with the Senate to see if they were going to let it go through this time. REPRESENTATIVE YARDLEY replied that he would suggest rather than amending this bill, let the Senate scrutinize it.

REPRESENTATIVE DAILY asked him if he said that one was confiscated in Butte in the last year and was destroyed. REPRESENTATIVE YARDLEY replied that he was told that it was about ready to be destroyed - this was back in December.

REPRESENTATIVE EUDAILY noted on the sheet that a lot of states had pre-1941 as the date. REPRESENTATIVE YARDLEY responded that he was told they used that because it would be a dividing line before and after the second world war.

There were no further questions and the hearing on this bill was closed.

HOUSE BILL 660

REPRESENTATIVE STELLA JEAN HANSEN, District 96, Missoula, stated that this was a bill to establish a procedure by which an individual alleging a violation of the human rights act may elect to pursue a complaint before the commission or in district court. She indicated that the bill should be amended on page 1, line 8, after "commission" insert "or".

ANNE MacINTYRE, Staff Attorney for the Human Rights Commission, presented the committee with a letter from John Frankino, Chairman of the Montana Human Rights Commission. See EXHIBIT C. She testified that the purpose of this bill is to establish a parallel procedure to that provided for in the federal system for resolution of complaints of discrimination.

There were no further proponents and no opponents.

REPRESENTATIVE HANSEN stated that she hoped they would give this bill careful consideration and send it out of this committee with a do pass.

REPRESENTATIVE KEYSER asked if they pass this bill, don't they in some instances, take the commission off the hook and throw that responsibility over into the court system; the courts are already loaded; you have said that the commission has not yet held a contested case; it seems as though that is within the commission's business to make sure that they do. REPRESENTATIVE HANSEN replied that it would seem to her that in all

fairness, if that person is dissatisfied with the inaction of the commission, he should have that right. She contended that if they have to wait too long and the discrimination continues, the case is going to build up while they are waiting for it to be heard by the commission.

MS. MacINTYRE responded that, first of all, very few of the commission cases actually go to hearing; presently they have approximately twenty-seven cases awaiting hearing and she does not believe that all of those will elect to go to court. She said secondly, many of the cases that are heard by the commission, in which the commission makes the final word, end up in district court anyway, because one of the parties appeals that decision in the district court; and she would say that perhaps as many as 75 per cent of the commission's decisions are appealed into district court through the judicial review process.

REPRESENTATIVE KEYSER asked if, in fact, the cases are being heard in district court and there is no problem of getting to district court, why do we need the bill. MS. MacINTYRE responded that when a case goes to district court after the commission has issued a decision, it is only on judicial review; the parties cannot have a trial in district court; the court only reviews what the commission has done; so, under this procedure, a party could go ahead and have the hearing before the commission, if one of the parties felt the commission was wrong, they could still appeal to district court for judicial review; or they could file a complaint in district court and have their case heard there initially. She continued that another point is that the commission staff resolves many of these cases through investigation and conciliation; probably 90 per cent of the cases that are filed with the commission are resolved informally without a hearing; in those cases, when they are resolved, they are over; and no one goes into court. If the only procedure that they had, she contended, was for the charging party to file directly in court, she thought they would see a lot more litigation and a lot more cases going to trial, because they would not have the mediation effort.

REPRESENTATIVE DAILY asked if this bill doesn't kind of defeat the purpose of the Human Rights Commission, and the reason he says that is because what you are doing here is that you are getting someone who has the funds or the opportunity to hire counsel a different alternative than the person who does not have the funds or the alternative to hire counsel. He felt as though it seemed that the bill was almost unconstitutional; and that you are going backwards instead of forwards with this bill. MS. MacINTYRE replied that she did not feel that it was going backwards; the point in the process where the commission and the commission staff are of most assistance to the parties without counsel is in the investigation and conciliation stages; in most instances, if someone has a hearing before the commission, they are represented by counsel at that stage; the hearings before the commission tend to be much like a trial; and there are very complex cases; and there is a need whenever a case goes to hearing for the complainant to be represented by counsel.

REPRESENTATIVE DAILY asked where does someone, who does not have funds, get counsel. MS. MacINTYRE answered that many people are able to find an attorney who will represent them on a contingency fee basis; the Human Rights Act also provides that a prevailing party in a human rights case can obtain attorney's fees at the conclusion of the case.

REPRESENTATIVE DAILY advised that in most contractual relationships, such as in school districts where there is a grievance procedure provided in the contract that when a union or the district files suit without following that grievance procedure first, without using all other available means before they get to court, he knows that the courts always rule that you go back and go through all the steps before you go to the courts. He wondered if the courts would do the same thing with this. REPRESENTATIVE ADDY replied that this is parallel to title VII; and, then all the administrative steps are not a necessary predisposition to a

suit in district court; the law says you can leapfrog if you want to.

FRITZ BEHR, Administrator of the Law Enforcement Services Division of the Department of Justice, explained that the confusion here was partly due to a misunderstanding and one was an administrative hearing and one is a trial of the facts and of the case for the court to come up with a finding.

REPRESENTATIVE HANNAH said that as he understands this if he had a complaint, he would go to the Human Rights Commission; and the commission rules against him; he can then appeal that to the district court, who will review this, they say that whoever ruled against him was right; and he asked if he was all done in his appeal process, or does he then have the right to go to district court for a trial. MS. MacINTYRE replied that if you go to the court after the commission's hearing and the court affirms what the commission did; at that point, you have the right to appeal to the state supreme court, but that is the only other option you have; you don't have the right to have a trial.

REPRESENTATIVE EUDAILY asked if this works in reverse - can you take it to district court and if you are not satisfied, can you go back to the commission. MS. MacINTYRE responded no, and any decision that the district court makes in a trial would be binding on the commission.

REPRESENTATIVE DAILY asked if a person didn't like the decision of the Human Rights Commission, could they not file a civil suit. He thought it seemed crazy that they are going to let the Human Rights Commission make the decision without there being another alternative. MS. MacINTYRE answered that under state law, there is not another alternative at this time.

REPRESENTATIVE DAILY asked could you file a civil suit if he did not like what the commission did or what the court did. MS. MacINTYRE answered no.

REPRESENTATIVE DAILY asked the same question of MR. BEHR, who responded that that is exactly what this bill proposes to do - to give you the right to go into court and file a civil suit, if you are not satisfied with what the Human Rights Commission has done; whereas, presently, as he understands it, the only right the person has, if he is dissatisfied, is to appeal to the court, but not to file suit.

REPRESENTATIVE HANNAH asked if they currently have a backlog of cases. MS. MacINTYRE responded that they do.

REPRESENTATIVE HANNAH asked if this would help relieve that backlog. MS. MacINTYRE replied that they are hoping that it will.

REPRESENTATIVE HANSEN informed the committee that under title VII of the federal law, it is restricted to fifteen employees or more; it also covers age, sex, religion, race and national origin, and that is all; but under our Montana law, it includes marital status, physical or mental handicap, political beliefs in governmental hiring; so without this law those last three would not come under any court decision; and also no employer that employs less than fifteen people would have the court option.

There were no further questions and the hearing on this bill was closed.

HOUSE BILL 608

REPRESENTATIVE SPAETH said this bill repeals sections 37-61-304 through 37-61-306, which establish procedures for disciplining attorneys that are inconsistent with orders and rules of the supreme court.

MARGARET JOHNSON, Assistant Attorney General, gave testimony in support of this bill. See EXHIBIT D.

There were no further proponents and no opponents.

REPRESENTATIVE SPAEHT closed.

There were no questions and the hearing on this bill was closed.

HOUSE BILL 642

REPRESENTATIVE KEYSER moved that this bill DO PASS. REPRESENTATIVE EUDAILY seconded the motion.

REPRESENTATIVE SEIFERT noted that it was a $1,000 fine to have a slot machine in your possession; they have had this bill for three sessions; he has had some slot machines for ten years; the last time we almost got it passed and Senator Turnage found some kind of a loophole that he thought that they might be able to put these antique slot machines out and use for open gambling and this killed the bill. He thought this time he was not going to oppose it.

The motion carried unanimously.

HOUSE BILL 660

REPRESENTATIVE ADDY moved that this bill DO PASS. The motion was seconded by REPRESENTATIVE KENNERLY.

REPRESENTATIVE EUDAILY indicated that he has a hard time seeing the need for this bill; because it seems to him that almost everything is provided at the present time that this provides for.

CHAIRMAN BROWN advised that actually it is not - right now there is no ability to go beyond the Human Rights Commission to the courts.

REPRESENTATIVE ADDY explained that the Human Rights Commission takes about six months to investigate a case and you can see that 180 days have elapsed; beyond that 180 days, if you go to contest a case, you are talking about at least another six months, and more likely nine months or a year; there are some judicial districts where you might want to get a more expeditious decision or would just prefer to go right into court for whatever reason - it is going to end up in court anyway after the commission has made their decision and this just gives the option to pursue it through the courts.

REPRESENTATIVE SEIFERT asked if it goes to court, who pays the court costs. REPRESENTATIVE ADDY responded that the losing party does.

REPRESENTATIVE CURTISS thought that this would dump a lot more cases on the district courts.

REPRESENTATIVE KEYSER said there was testimony that they have an overload on cases and he knows that they will use this to try to reduce that load.

REPRESENTATIVE ADDY replied that the option is with the claimant.

REPRESENTATIVE ADDY moved that they amend the title in line 8, by inserting "or" following "commission". The motion was seconded by REPRESENTATIVE EUDAILY.

REPRESENTATIVE ADDY moved that the bill DO PASS AS AMENDED. REPRESENTATIVE KENNERLY seconded the motion.

The motion carried with 11 voting aye and 6 voting no. See ROLL CALL VOTE.

HOUSE BILL 585

REPRESENTATIVE HANNAH moved that this bill DO PASS. REPRESENTATIVE ADDY made a substitute motion that the bill DO NOT PASS. The motion was seconded by REPRESENTATIVE FARRIS.

REPRESENTATIVE HANNAN stated that they have people who are committing these offenses, who are not being designated as dangerous offenders; and they do have a serious problem here.

CHAIRMAN BROWN passed out to the committee statistics on this bill and CURT CHISHOLM, Deputy Director of the Department of Institutions, explained them to the committee. See EXHIBIT M.

REPRESENTATIVE RAMIREZ said that this is one of those things that really needs to be addressed, but it is something that we do not have enough information and he is worried about what the impact would be.

STANDING COMMITTEE REPORT

February 12, 19 83

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 660

First reading copy (white)
Color

A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH A PROCEDURE BY WHICH AN INDIVIDUAL ALLEGING A VIOLATION OF THE HUMAN RIGHTS ACT MAY ELECT TO PURSUE A COMPLAIN BEFORE THE COMMISSION IN DISTRICT COURT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

Respectfully report as follows: That HOUSE Bill No. 660

BE AMENDED AS FOLLOWS:

1. Title, line 8.

Following: "COMMISSION"
Insert: "OR"

AND AS AMENDED

DO PASS

Dave Brown, Chairman.

STATE PUB. CO.
Helena, Mont.

ROLL CALL VOTE ------ HOUSE JUDICIARY COMMITTEE

	Date: 2/11 No: HB 660 Do Pass As Amended	Date: 2/11 No: HB 585 Do Not Pass As Amended	Date: No:	Date: No:	Date No:	Date No:	Date: No:
BROWN, Dave	yes	yes					
ADDY, Kelly	yes	yes					
BERGENE, Toni	yes	yes					
BROWN, Jan	no	yes					
CURTISS, Aubyn	no	no					
DAILY, Fritz	no	no					
DARKO, Paula	yes	yes					
EUDAILY, Ralph	no	no					
FARRIS, Carol	yes	yes					
HANNAH, Tom	yes	no					
IVERSON, Dennis	yes	no					
JENSEN, James	yes	yes					
KENNERLY, Roland	yes	yes					
KEYSER, Kerry	no	no					
RAMIREZ, Jack	—	no					
SCHYE, Ted	yes	yes					
SEIFERT, Carl	no	yes					
SPAETH, Gary	yes	yes					
VELEBER, Dennis	—	yes					
	11-yes	12-yes					

Ex. 5, 5, + C
HB 501 + 660
2/11/83

HUMAN RIGHTS COMMISSION

STATE OF MONTANA

TED SCHWINDEN, GOVERNOR
(406) 449-2884

ROOM C-317, COGSWELL BUILDING
HELENA, MONTANA 59620

February 11, 1983

The Honorable Dave Brown, Chairman
Judiciary Committee
House of Representatives
Capitol Station
Helena, MT 59620

Dear Chairman Brown:

House Bills 501 and 660 are before this committee today at the request of the Montana Human Rights Commission.

The Commission has requested Raymond D. Brown, Administrator and Anne L. MacIntyre, Staff Attorney to speak in support of these bills on behalf of the Commission.

Thank you for your consideration.

Sincerely,

John Frankino

John Frankino
Chairman
Montana Human Rights Commission

JF/tg

WITNESS STATEMENT

Name Anne MacIntyre Committee On Judiciary

Address Room C-317, Cogswell Bldg, St. Capitol Date 2/11/83

Representing Human Rights Comm Support ✓

Bill No. HB660 Oppose

Amend

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1.

2.

3.

4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

FORM CS-34
1-83

48th LEGISLATIVE SESSION

COMMITTEE ON Senate Judiciary

BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
616	2-14-83	3-8-83	3-8-83					3-8-83	
617	3-1-83	3-17-83	3-17-83				3-17-83		
618	2-16-83	3-18-83	3-19-83				3-19-83		
619	2-16-83	3-10-83	3-10-83				3-10-83		
628	2-16-83	3-7-83	TABLED						
629	2-14-83	3-17-83	3-17-83				3-17-83		
642	2-17-83	3-8-83	3-10-83					3-10-83	
660	2-18-83	3-9-83	3-14-83					3-14-83	
662	3-16-83	3-18-83	3-22-83					3-22-83	
677	3-2-83	3-21-83	3-21-83				3-21-83		
678	3-2-83	3-18-83	3-19-83				3-19-83		
684	2-18-83	3-23-83	3-23-83				3-23-83		
705	3-1-83	3-16-83	3-19-83					3-22-83	
714	3-24-83	3-25-83	3-25-83					3-25-83	
731	3-1-83	3-21-83	3-21-83				3-21-83		
741	3-1-83	3-16-83	3-16-83				3-16-83		

Use a separate sheet for Senate, House Bills, and Resolutions.

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
March 9, 1983

The thirty-eighth meeting of the Senate Judiciary Committee was called to order by Chairman Jean A. Turnage on March 9, 1983, at 10:05 a.m., in Room 325, State Capitol.

ROLL CALL: All members were present.

CONSIDERATION OF HOUSE BILL 194: Representative Swift stated that he feels the drinking age should be raised to 21 years of age because of the major impact alcohol has on young people. Representative Swift feels there are three areas in particular where alcohol affects young people the most:

1. Some 19 year olds are still in high school;
2. The high rate of traffic accidents due to alcohol;
3. Problems with alcohol consumption by children who are still in grades 6 through 9.

Representative Swift doesn't feel raising the drinking age will help the problem totally but will help on a short-term basis. He also stated that the current DUI program is only reaching one percent of the drunk drivers on Montana's highways. Representative Swift feels this problem is the responsibility of parents, teachers and individuals. He also stated that in 1972, 45 other states did the same as Montana by lowering the drinking age to 18. Since that time, 20 of these states have raised the drinking age back to 21 years of age. Representative Swift strongly urges support of HB194, and submitted a survey conducted by Jan Reagor at her own expense (see attached Exhibit "A").

PROPONENTS: Jan Reagor submitted written testimony (see attached Exhibit "B"). She reported that according to her survey, 62 percent of the voters would support a bill raising the drinking age in Montana to 21 years of age. She urged passage of HB194.

Sharon S. Finney, representing the Montana Parent Teachers Association, presented written testimony (see attached Exhibit "C"). Ms. Finney stated that the Parent Teachers Association supports a resolution to raise the drinking age to 21 years of age on a nationwide level and urged the Committee to give this bill a DO PASS recommendation, so Montana Citizens will be afforded the opportunity to voice their opinion.

Steve King, representing Schodair Hospital, stated that he felt the wide use of alcohol by young people today was due to its

Mrs. Fisher also submitted written testimony from Judge Gary supporting HB250 (see attached Exhibit "H").

Larry Majerus, representing the Motor Vehicl Division of the Montana Department of Justice, distributed a proposed amendment to HB250 requiring at least 48 hours of the mandatory jail sentence to be consequtive (see attached Exhibit "I").

Michael Wood, representing the Missoula County Drunk Driving Task Force, submitted written testimony (see attached Exhibit "J") stating that drunk driving is a public health problem and the fourth leading cause of accidents in Montana. He reminded the Committee that the Montana Constitution has a guarantee of a clean and healthy environment. Mr. Wood urged the Committee to give a DO PASS AS AMENDED to HB 250. Mr. Wood then submitted the written testimony of Jim Nuggent, City Attorney for Missoula, Montana (attached as Exhibit "K").

Marcel Turcotte, representing the Montana Magistrates Association, stated that his position on HB250 is neutral. Mr. Turcotte explained that he had fought the bill in the House for the reason that it takes away the judge's discretion in sentencing.

There being no further proponents and no opponents, the hearing was opened to questions from the Committee.

Senator Mazurek raised questions with Representative Vincent with regard to plea bargaining for reducing DUI's to wreckless driving and Representative Vincent advised that HB540 would dramatically change plea bargaining situations.

Senator Berg questioned Representative Vincent about what a city like Billings would do in a situation where their jails are full. Representative Vincent stated that we must not tailor legislation to accommodate this situation.

CONSIDERATION OF HOUSE BILL 660: Representative Hansen asked the Committee to establish a mechanism for complaints to pursue a complaint either before the Human Rights Commission or District Court because the number of cases is growing. Representative Hansen feels this would establish a simple procedure and resolve 90 percent of the cases. If the case were not settled within 180 days, the complainant could go to District Court.

PROPONENTS: Anne MacIntyre, the staff attorney of the Montana Human Rights Commission, testified in favor of HB660. She submitted written testimony from John L. Frankino, Chairman of the Human Rights Commission (see attached Exhibit "L").

There being no further proponents and no opponents, the hearing was opened to questions from the Committee.

Senator Mazurek asked Ms. MacIntyre if the Legislature passed a similar bill in the 1981 session. Ms. MacIntyre stated it had not.

Senator Crippen inquired whether the hearings before the Human Rights Commission would be similar to the trials held in District Court. Ms. MacIntyre agreed they would be.

Senator Turnage then inquired how many cases the Human Rights Commission heard last year. Ms. MacIntyre informed Senator Turnage the number was 230. In response to questions by Senators Mazurek and Turnage, Ms. MacIntyre agreed that the language in subsection (2) of section 2 would prevent a person from litigating his grievance in District Court at any time other than within 90 days after the letter is received.

There being no further discussion, the hearing was closed.

ADJOURN: There being no further business before the Committee, the meeting was adjourned at 11:53 a.m.

Jean A. Turnage

JEAN A. TURNAGE
Chairman, Judiciary Committee

EXHIBIT "K"

HUMAN RIGHTS COMMISSION

STATE OF MONTANA

TED SCHWINDEN, GOVERNOR
(406) 449-2884

ROOM C-317, COGSWELL BUILDING
HELENA, MONTANA 59620

March 9, 1983

The Honorable Jean A. Turnage, Chairman
Judiciary Committee
Senate
Captiol Station
Helena, MT 59620

Dear Chairman Turnage:

House Bill 660 is before this Committee today at the request of the Montana Human Rights Commission.

The Commission has requested Raymond D. Brown, Administrator and Anne L. MacIntyre, Staff Attorney to speak in support of these bills on behalf of the Commission.

Thank you for your consideration.

Sincerely,

John Frankino

John L. Frankino
Chairman
Montana Human Rights Commission

JLF/tg

with the Human Rights Commission

At the present time, when a complaint is filed, the parties are entitled to a contested case hearing before the Commission, pursuant to section 49-2-505, MCA, and the Montana Administrative Procedure Act. The parties are then entitled to judicial review of commission decisions in state district court but are not entitled to a new trial or hearing. The purpose of HB 660 is to establish a mechanism which allows an individual to pursue a complaint of discrimination either before the Human Rights Commission or in state district court.

There are several reasons the Commission has requested the introduction of this legislation. First, many complainants who are represented by counsel from the outset would prefer to pursue their complaints in court rather than at an administrative hearing. Secondly, because of the inadequate funding of the Commission, the number of cases awaiting hearing is large and growing. While the number is not large compared to the number of cases which are resolved by the Commission staff through investigation and conciliation prior to hearing, it does contribute to the Commission backlog. Furthermore, in many cases, damages continue to accrue while cases are awaiting hearing and this seems particularly inequitable to Respondents.

The procedure established by this bill is parallel to the procedure contained in Title VII of the Civil Rights Act of 1964, the principal federal law which prohibits employment discrimination. Under the federal law, an individual alleging a violation of the Act must file a complaint with the Equal Employment Opportunity Commission. After the Complaint has been investigated by the Commission, the Commission issues a "right to sue" letter, authorizing the complainant to file a lawsuit in U.S. District Court. HB 660 would establish a similar procedure for complaints alleging

a violation of the Montana Human Rights Act.

Because of the fact that the Commission staff is able to resolve more than 90% of the cases filed with it through conciliation and investigation, the Commission believes that all complaints should be filed with the Commission initially. If the Commission staff cannot resolve the complaint within 180 days through conciliation and investigation, the complainant can then exercise the election provided for in this bill.

effective date and to cases filed with the commission for human rights on or after its effective date (effective April 18, 1985)."

Cross-References
Injunctions, Title 27, ch. 19.

49-2-509. Filing a complaint in district court. (1) The commission staff shall, at the request of either party, issue a letter entitling the complainant to file a discrimination action in district court if:

(a) the commission has not yet held a contested case hearing pursuant to 49-2-505 and has determined that it will be unable to hold a contested case hearing within 12 months of the date the complaint was filed under 49-2-501; and

(b) 180 days have elapsed since the complaint was filed and the efforts of the commission staff to settle the complaint after informal investigation pursuant to 49-2-504 have been unsuccessful.

(2) Within 90 days after receipt of a letter issued by the commission pursuant to subsection (1), the complainant shall petition the district court in the district in which the alleged violation occurred for appropriate relief. If the claimant fails to petition the district court within 90 days after receipt of a letter issued by the commission, the claim shall be barred.

(3) If the district court finds, in an action under this section, that a person, institution, entity, or agency against whom or which a complaint was filed has engaged in the unlawful discriminatory practice alleged in the complaint, the court may provide the same relief as described in 49-2-506 for a commission order. In addition, the court may in its discretion allow the prevailing party reasonable attorney fees.

History: En. Sec. 1, Ch. 505, L. 1983.

Part 6
Penalties

49-2-601. Criminal penalty. A person, educational institution, or financial institution, either public or private, or a governmental entity or agency who or which willfully engages in an unlawful discriminatory practice prohibited by this chapter or willfully resists, prevents, impedes, or interferes with the commission, the department, or any of its authorized representatives in the performance of a duty under this chapter or who or which willfully violates an order of the commission or willfully violates this chapter in any other manner is guilty of a misdemeanor and is punishable by a fine of not more than $500 or by imprisonment for not more than 6 months, or both.

History: En. 64-312 by Sec. 9, Ch. 283, L. 1974; amd. Sec. 10, Ch. 524, L. 1975; R.C.M. 1947, 64-312(3); amd. Sec. 12, Ch. 177, L. 1979.

Cross-References
Place of imprisonment, 46-18-211.

CHAPTER 3
GOVERNMENTAL CODE OF FAIR PRACTICES

Part 1 — General Provisions

Section
49-3-101. Definitions.
49-3-102. What local governmental units affected.

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
March 10, 1983

The thirty-ninth meeting of the Senate Judiciary Committee was called to order by Chairman Jean A. Turnage on March 10, 1983, at 10:15 a.m., in Room 325, State Capitol.

ROLL CALL: All members were present.

CONSIDERATION OF HOUSE BILL 272: Representative Nilson submitted written testimony (see attached Exhibit "A") and explained that HB272 is a bill to prevent judges from sentencing 16 to 18 year old offenders directly to Swan River Youth Camp. Representative Nilson feels this bill is important because of the "dorm style" living conditions which exist between youthful offenders and offenders between the ages of 18-25, and because no fence exists at Swan River Youth Camp.

PROPONENTS: Curt Chisholm, Deputy Director of the Montana State Department of Institutions stated that he feels we need to reflect in the law what we are doing at Swan River Youth Camp. Originally, the camp was intended for adult and young adult offenders, but at the present time, it is apparent we cannot house both at the facility. Mr. Chisholm urged the Committee to pass HB272.

There being no further proponents and no opponents and no questions from the Committee, the hearing was closed.

CONSIDERATION OF HOUSE BILL 619: Senator Hannah stated that there are practical problems with the current laws on how landlords may terminate rental agreements of persons damaging rental property. The current law only provides long-term solutions for the landlord when a tenant is damaging his property. HB619 would provide a landlord with the means to terminate a rental agreement within three days. This provides the landlord with a remedy before the tenant has time to do more damage.

PROPONENTS: Ben Havdahl circulated pictures among the Committee members of an apratment house seriously damaged by tenants. He stated that although the majority of tenants are good, there are exceptions. Mr. Havdahl stated that he supports HB619.

Julio Morales, President of the Montana Landlord's Association, submitted written testimony (see attached Exhibit "B") and stated he was in favor of HB619. It is his feeling that a landlord should not have to standby idley while someone destroys his property. Mr. Morales supports a three-day waiting period.

Dennis Rehberg of the Montana Association of Realtors stated that recently a tenant had built a campfire in a rental unit and situations like this require a swift remedy of law.

There being no further questions from the Committee, Representative Waldron closed by stating that he was not happy to have to carry this bill, but he is very concerned with the effects of the over-crowded conditions at the prison.

ACTION ON HOUSE BILL 546: The Chairman announced the Committee was ready to consider executive action on this bill. Senator Mazurek moved HB546 BE CONCURRED IN. This motion carried unanimously.

ACTION ON HOUSE BILL 272: Senator Daniels expressed concern with how the residents near Swan River Youth Camp will feel about this bill. Senator Halligan moved HB272 BE CONCURRED IN. The motion carried with Senators Crippen, Brown and Daniels voting in opposition.

ACTION ON HOUSE BILL 619: Senator Shaw moved that HB619 BE CONCURRED IN. This motion carried unanimously.

ACTION ON HOUSE BILL 194: All Senators agreed there is a problem with the use of "maximum age." Senator Crippen suggested the term "legal age." Senator Mazurek felt that any change in the term would confuse the electors. Senator Crippen moved that HB194 BE CONCURRED IN. This motion passed unanimously.

ACTION ON HOUSE JOINT RESOLUTION 23: Senator Halligan moved that HJR23 BE ADOPTED. This motion carried with Senator Brown voting in opposition.

ACTION ON HOUSE BILL 642: Counsel for the Committee distributed proposed amendments and reviewed. Senator Mazurek was concerned with privately owned clubs which are not open to the public. Senator Crippen moved that the proposed amendments to HB642 BE ADOPTED. This motion carried unanimously. Senator Galt moved that HB642 BE CONCURRED IN AS AMENDED. This motion carried unanimously.

ACTION ON HOUSE BILL 660: Senator Crippen moved to TABLE HB660. This motion carried with Senator Berg voting in opposition.

ACTION ON HOUSE BILL 575: Senator Mazurek stated he had made an error in tabling this bill and made a motion to reconsider that action. This motion carried unanimously. Senator Mazurek then moved that HB575 BE CONCURRED IN. This motion carried unanimously and it was agreed Senator Mazurek would carry the bill.

ACTION ON HOUSE BILL 250: Senator Mazurek was concerned that a $500 to $1,000 fine would mean that the crime was no longer triable in justice court and would have to go to district court. Senator Shaw stated that he wasn't sure a mandatory sentence would help habitual offenders.

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
March 14, 1983

The forty-second meeting of the Senate Judiciary Committee was called to order by Chairman Jean A. Turnage on March 14, 1983, at 10:03 a.m., Room 325, State Capitol.

ROLL CALL: All members were present.

CONSIDERATION OF HOUSE BILL 505: Representative Bardanouve stated that he would like to address House Bills 489, 530, 533, 505, 531 and 532 as a whole rather than individually. Representative Bardanouve stated that these bills are intended to reflect a change in terminology and to bring Montana's laws into conformity with GAAP. He informed the Committee that GAAP stood for Generally Accepted Accounting Practices. Representative Bardanouve then explained that in HB531, the retirement division account will, under the terms of the bill, be referred to as the pension trust fund. He explained that this trust fund is not a permanent trust fund. HB 532 amends the worker's compensation fund law to refer to the industrial insurance account as a special revenue fund. This is an expendable trust. HB 489 will refer to the earmark revenue funds as the state special revenue funds. Representative Bardanouve testified that with this new terminology we will have an up-dated, modern form of laws for fiscal control. He also informed the Committee that Montana is in the forefront as far as modernizing our laws.

Morris Brusett, Director of the Department of Administration, testifie that Montana needs to go along with Generally Accepted Accounting Practices. He stated a special task force which had been formed was in total agreement with these principles.

There being no further proponents and no opponents, the hearing was opened to questions from the Committee.

Senator Galt inquired as to who was the Montana State Treasurer. Mr. Brusett responded that he was the ex officio state treasurer. Senator Turnage commented that these bills were an improvement and, hopefully, would not create any problems in the legislative process.

CONSIDERATION OF HOUSE BILL 179: Representative Bardanouve stated that HB179 is a bill to amend a law that he had introduced as a bill in 1963. This bill amends the Montana unclaimed property laws. Representative Bardanouve stated that the 1963 law regarding unclaimed property is responsbile for placing $3,703,000 in the State treasury. The interest collected on this money goes into the education trust fund to help our schools. Representative Bardanouve

testified that $200,000 has been given back to the citizens of Montana under the 1963 law. This bill modernizes what the state can claim as unclaimed property and gives specific dates for publication of unclaimed property by the State. This bill also sets up a statute of limitations of ten years and includes penalties for persons who do not deliver unclaimed property to the state.

PROPONENTS: Mr. Jim Madison of the Miscellaneous Tax Division, Montana Department of Revenue, testified that he is in favor of HB179. He stated that civil penalties under the law are much better than criminal penalties.

OPPOSITION: Mr. Glenn Drake, representing various insurance companies stated it was his opinion the term "life" should be inserted on p.3, line 1, in front of the word "insurance". Representative Bardanouve stated that it was his intention to include the proceeds of all forms of insurance in the bill and that perhaps "life insurance" should be replaced throughout the bill with "assets".

There being no further proponents or opponents, the hearing was opened to questions from the Committee.

Senator Halligan inquired whether HB179 referred to all property or only to intangible property. Senator Turnage explained that the bill covered tangible and intangible property.

Representative Bardanouve explained about Post Office Savings accounts established in the 1930's and stated there may be a lot of money still in these accounts. Senator Berg then asked whether this bill would affect the federal government and was told by Representative Bardanouve that HB179 would only affect state governments.

ACTION ON HOUSE BILL 660: Proposed amendments were submitted by Senator Turnage and by Ann MacIntyre of the Human Rights Commission. Since these amendments were substantially the same, Ann MacIntyre's amendments were voted on with one change. Senator Turnage questioned the use of "may" in line 25, page 1. Senator Mazurek made a motion to pass the amendments as proposed by Ann MacIntyre with the Committee's addition. The motion carried unanimously. Senator Mazurek then moved that the bill BE CONCURRED IN AS AMENDED. The motion carried unanimously.

ACTION ON HOUSE BILLS 489, 530, 533, 505, 531 and 532: Senator Shaw made a blanket motion that House Bills 489, 530, 533, 505, 531,

ACTION ON HOUSE BILL 42: It was the consensus of the Committee that the two bills being heard in Agriculture may more effectively deal with the problem. Senator Mazurek moved to TABLE HB42. This motion carried unanimously.

ACTION ON HOUSE BILL 562: Senator Mazurek proposed to amend the bill to add consent as a defense. The Committee also determined the definition of "cohabitation." Senator Daniels felt the language on lines 17 and 18 and lines 21 and 22 was redundant because if the adoption takes place there is no longer a step-relationship. The age of consent was discussed. Senator Mazurek then moved to amend the bill as shown on the attached Committee Report. This motion carried unanimously. Senator Mazurek moved that AS AMENDED HB562 BE CONCURRED IN. This motion also carried unanimously.

RECONSIDERATION OF HOUSE BILL 660: The Committee agreed they should reconsider their action on House Bill 660. An amendment was proposed by Senators Turnage and Mazurek to require three prerequisites to the issuance of the letter. It was suggested that the defendant as well as the complainant should have the option to request a right to sue letter. The bill was then referred to counsel for research.

ACTION ON HOUSE BILL 825: It was agreed that the amendments proposed were complicated. Senator Daniels was concerned with where the burden of proof lies and that the condemnee must show cause. "Reasonable effort" was discussed. Senator Berg moved to adopt all of the Northern Plains' suggested amendments (see proposed amendments - March 11, 1983 Minutes). This motion carried unanimously. Senator Daniels moved to adopt #1, #5 and #6 of the Montana Power Company proposed amendments (see proposed amendments - March 11, 1983 Minutes). This motion carried unanimously. Senator Turnage then moved to strike "license" on page 3, line 21 and to insert "other interest." This motion carried unanimously. Senator Halligan moved that AS AMENDED HB825 BE CONCURRED IN and this motion passed unanimously.

ACTION ON HOUSE BILL 220: The Committee felt that HB220 would require the court to order the tenant to pay accrued rent. Some Committee members stated this bill was not really necessary. Senator Crippen moved HB220 BE CONCURRED IN. This motion failed with Senators Daniels, Halligan, Berg, Shaw and Brown voting in opposition. Senator Mazurek stated that the tenant has the ability to pay the court now, but this bill will require the court to be paid in every instance. He suggested leaving the court with some discretion. Senator Shaw moved that HB220 BE NOT CONCURRED IN. A roll-call vote was taken and the motion carried seven to two.

STANDING COMMITTEE REPORT

March 14, 1983

MR. President

We, your committee on Senate Judiciary

having had under consideration House Bill No. 660

Respectfully report as follows: That House Bill No. 660
third reading, be amended as follows:

Title, line 8.
Following: "COURT"
Insert: "AND BY WHICH A PERSON AGAINST WHOM A COMPLAINT WAS FILED MAY ELECT TO HAVE THE MATTER REMOVED TO DISTRICT COURT"

Page 1, lines 13-14.
Following: "of"
Strike: "the complainant,"
Insert: "either party,"

Page 1, Lines 17-23.
Following: "49-2-505"
Strike: remainder of lines 17-23 in their entirety
Insert: "and has determined that it will be unable to hold a contested case hearing within 12 months of the date the complaint was filed under 49-2-501; and

(b) 180 days have elapsed since the complaint was filed and the efforts of the commission staff to settle the complaint after informal

~~DO PASS~~

continued on p. 2

Jean A. Turnage
Chairman.

STATE PUB. CO.
Helena, Mont.

March 14, 19 83

investigation pursuant to 49-2-504 have been unsuccessful."

Page 1, line 25.
Following: "(1),"
Strike: "a"
Insert: "the"
Following: "complainant"
Strike: "may"
Insert: "shall"

Page 2, line 2.
Following: "relief."
Insert: "If the claimant fails to petition the District Court within 90 days after receipt of a letter issued by the Commission, the claim shall be barred."

And, as so amended,
BE CONCURRED IN

Chairman.

STATE PUB. CO.
Helena, Mont.

HB 0660/03

HOUSE BILL NO. 660

INTRODUCED BY HANSEN, CHRISTIAENS

BY REQUEST OF THE COMMISSION FOR HUMAN RIGHTS

A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH A PROCEDURE BY WHICH AN INDIVIDUAL ALLEGING A VIOLATION OF THE HUMAN RIGHTS ACT MAY ELECT TO PURSUE A COMPLAINT BEFORE THE COMMISSION OR IN DISTRICT COURT AND BY WHICH A PERSON AGAINST WHOM A COMPLAINT WAS FILED MAY ELECT TO HAVE THE MATTER REMOVED TO DISTRICT COURT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Filing a complaint in district court. (1) The commission staff shall, at the request of ~~the complainant~~ EITHER PARTY, issue a letter entitling the complainant to file a discrimination action in district court if:

(a) the commission has not yet held a contested case hearing pursuant to 49-2-505~~;~~ ~~and~~

~~(b) one of the following has occurred:~~

~~(i) 180 days have elapsed since the date the complaint was filed under 49-2-501; or~~

~~(ii) the commission staff determines that its efforts to informally investigate and settle the complaint pursuant to 49-2-504 are unsuccessful.~~ AND HAS DETERMINED THAT IT WILL BE UNABLE TO HOLD A CONTESTED CASE HEARING WITHIN 12 MONTHS OF THE DATE THE COMPLAINT WAS FILED UNDER 49-2-501; AND

(B) 180 DAYS HAVE ELAPSED SINCE THE COMPLAINT WAS FILED AND THE EFFORTS OF THE COMMISSION STAFF TO SETTLE THE COMPLAINT AFTER INFORMAL INVESTIGATION PURSUANT TO 49-2-504 HAVE BEEN UNSUCCESSFUL.

(2) Within 90 days after receipt of a letter issued by the commission pursuant to subsection (1), a THE complainant may SHALL petition the district court in the district in which the alleged violation occurred for appropriate relief. IF THE CLAIMANT FAILS TO PETITION THE DISTRICT COURT WITHIN 90 DAYS AFTER RECEIPT OF A LETTER ISSUED BY THE COMMISSION, THE CLAIM SHALL BE BARRED.

(3) If the district court finds, in an action under this section, that a person, institution, entity, or agency against whom or which a complaint was filed has engaged in the unlawful discriminatory practice alleged in the complaint, the court may provide the same relief as described in 49-2-506 for a commission order. In addition, the court may in its discretion allow the prevailing party reasonable attorney fees.

Section 2. Codification instruction. Section 1 is intended to be codified as an integral part of Title 49,

REFERENCE BILL

chapter 2, part 5, and the provisions of Title 49, chapter 2, apply to section 1.

Section 3. Effective date. This act is effective on passage and approval.

-End-